

FILED IN
1st COURT OF APPEALS
HOUSTON, TEXAS
3/20/2020 10:21:09 AM
CHRISTOPHER A. PRINE
Clerk

Nos. 01-20-00004-CR and 01-20-00005-CR

In the Court of Appeals
For the First District of Texas
At Houston

—◆—
Nos. 1657519 and 1657521
In the 338th District Court
Of Harris County, Texas

—◆—
Ex parte Joseph Eric Gomez
Appellant

—◆—
**State's Response in Opposition to
Appellant's Motion to Set Bail**

Clint Morgan
Assistant District Attorney
Harris County, Texas
State Bar No. 24071454
morgan_clinton@dao.hctx.net

500 Jefferson Street, Suite 600
Houston, Texas 77002
Telephone: 713 274 5826

Kim Ogg
District Attorney
Harris County, Texas

Crystal Okorafor
Assistant District Attorney
Harris County, Texas

This Court has no authority to set bail during an appeal from the denial of habeas relief.

This case is an appeal from the trial court's denial of habeas relief. The appellant's habeas application did not claim that his bail was illegally high; instead his application complained only about the procedure the trial court used to set the bail. The appellant is awaiting trial on two charges—one, the first-degree felony offense of burglary of a habitation with the intent to commit a felony, and other a third-degree felony charge of assault, by strangulation, of an individual with whom he had a dating relationship. The trial court has set bail at \$75,000 for each charge.

The appellant now asks this Court to “issue an order to the Sheriff of Harris County to release [the appellant] on a personal bond in the amount of \$50,000.00 with the condition that he is to reside and remain within his parent's home to be supervised by the Harris County Pretrial Services department.” (Appellant's Motion at 5). But this Court has no authority to issue such an order.

The appellant cites two authorities he seems to believe give this Court authority to set bail here. The first is Code of Criminal Procedure Article 11.32. (Appellant's Motion at 4). But that article puts a habeas

applicant in the custody of “the judge or court issuing the writ, or to which the return is made.” TEX. CODE CRIM. PROC. art. 11.32. Assuming this article has continuing application during an appeal, it would put the appellant into the custody of *the trial court*, not this court.

Intermediate appellate courts have no authority to issue habeas corpus relief in criminal cases. *See* TEX. CODE CRIM. PROC. art. 11.05; TEX. GOV’T CODE § 22.221. On appeal from the denial of habeas relief, the limit of an appellate court’s authority is to determine whether the trial court abused its discretion. *See State v. Wilson*, 288 S.W.3d 13, 15 (Tex. App.—Houston [1st Dist.] 2008) *aff’d*, 324 S.W.3d 595 (Tex. Crim. App. 2010). An appeal from the trial court’s denial of pretrial habeas relief is just an appeal, not an original habeas application.

The appellant’s second citation is to a dissent in in *Ex parte Reposa*, 541 S.W.3d 186 (Tex. Crim. App. 2017). The appellant quotes the dissenting judge declaring “this Court has the authority to release a person who has pending habeas proceedings before it.” But in that statement, “this Court” was the Court of Criminal Appeals, which has habeas corpus jurisdiction. *Reposa* was an unsuccessful attempt to invoke that court’s original habeas jurisdiction. In contrast, this case is just an appeal from another court’s exercise of its habeas jurisdiction.

An appeal from the denial of pretrial habeas relief is a sort of interlocutory appeal. The original criminal proceeding is still ongoing, and the habeas appeal does not necessarily stay those proceedings. The appellant is free to keep approaching the trial court and requesting a bail reduction, and the pendency of this appeal does not hinder that procedure in any way. *See Ex parte Irsan*, 01-16-00315-CR, 2017 WL 769896, at *1 (Tex. App.—Houston [1st Dist.] Feb. 28, 2017, no pet.) (mem. op. not designated for publication) (dismissing pretrial habeas appeal because trial court reduced bail during pendency of appeal).

The appellant is aware of this procedure; he says he has recently requested a bail reduction but the trial court denied his request. (Appellant's Brief at 3). If true, the appellant's remedy is to file a second application for writ of habeas corpus, this time challenging the amount of his bail, and then, if the trial court denies relief, appeal the matter to this Court.

Instead, what the appellant has effectively done is to file an informal appeal from the trial court's denial of a motion to reduce bail. But a trial court's denial of a motion to reduce bail is not appealable. *Ragston v. State*, 424 S.W.3d 49, 52 (Tex. Crim. App. 2014).

Conclusion

This Court should deny the appellant's motion because it is without authority to grant the requested relief.

Kim Ogg
District Attorney
Harris County, Texas

/s/ C.A. Morgan
Clint Morgan
Assistant District Attorney
Harris County, Texas
500 Jefferson Street, Suite 600
Houston, Texas 77002
Telephone: 713 274 5826
Texas Bar No. 24071454

Certificate of Compliance and Service

I certify that, according to Microsoft Word, the portion of this brief for which Rule of Appellate Procedure 9.4(i)(1) requires a word count contains 681 words.

I also certify that I have requested that efile.txcourts.gov electronically serve a copy of this brief to:

Brent Mayr
bmayr@mayr-law.com

Sierra Tabone
stabone@mayr-law.com

Stanley G. Schneider
stans12@aol.com

/s/ C.A. Morgan
Clint Morgan
Assistant District Attorney
Harris County, Texas
500 Jefferson Street, Suite 600
Houston, Texas 77002
Telephone: 713 274 5826
Texas Bar No. 24071454

Date: March 20, 2020

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Clinton Morgan
Bar No. 24071454
morgan_clinton@dao.hctx.net
Envelope ID: 41813679
Status as of 03/20/2020 10:25:31 AM -05:00

Associated Case Party: Joseph Gomez

Name	BarNumber	Email	TimestampSubmitted	Status
Stanley G. Schneider	17790500	stans3112@aol.com	3/20/2020 10:21:09 AM	SENT
Sierra Tabone	24095963	stabone@mayr-law.com	3/20/2020 10:21:09 AM	SENT
Brent Mayr		bmayr@mayr-law.com	3/20/2020 10:21:09 AM	SENT